

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 6th day of August, two thousand eight.

PRESENT:

HON. BARRINGTON D. PARKER,
HON. RICHARD C. WESLEY,
HON. DEBRA ANN LIVINGSTON,
Circuit Judges.

RICARDO WIDADA,

Petitioner,

v.

MICHAEL B. MUKASEY,
U.S. ATTORNEY GENERAL,

Respondent.

08-0379-ag
NAC

FOR PETITIONER:

Charles Christophe, New York, New
York.

1 **FOR RESPONDENT:** **Gregory G. Katsas, Acting Assistant**
2 **Attorney General; Linda S. Wernery,**
3 **Assistant Director; Thankful T.**
4 **Vanderstar, Trial Attorney, Office**
5 **of Immigration Litigation, U.S.**
6 **Department of Justice, Washington,**
7 **D.C.**
8

9 UPON DUE CONSIDERATION of this petition for review of a
10 decision of the Board of Immigration Appeals ("BIA"), it is
11 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
12 review is DENIED, in part, and DISMISSED, in part.

13 Petitioner Ricardo Widada, a native and citizen of
14 Indonesia, seeks review of a December 27, 2007 order of the
15 BIA affirming the October 19, 2006 decision of Immigration
16 Judge ("IJ") Robert D. Weisel denying his application for
17 withholding of removal and relief under the Convention
18 Against Torture ("CAT"). *In re Ricardo Widada*, No. A96 203
19 492 (B.I.A. Dec. 27, 2007), *aff'g* No. A96 203 492 (Immig.
20 Ct. N.Y. City Oct. 19, 2006). We assume the parties'
21 familiarity with the underlying facts and procedural history
22 of the case.

23 As an initial matter, because Widada failed to exhaust
24 his challenge to the IJ's denial of his request for relief
25 under the CAT, we are without jurisdiction to consider that
26 claim. See 8 U.S.C. § 1252(d)(1); *Karaj v. Gonzales*, 462
27 F.3d 113, 119 (2d Cir. 2006) (citing *Beharry v. Ashcroft*,
28 329 F.3d 51, 59 (2d Cir. 2003)). We dismiss the petition

1 for review to that extent and review only Widada's challenge
2 to the denial of his application for withholding of removal.

3 Where the BIA affirms the IJ's decision in all respects
4 but one and then supplements that decision, this Court
5 reviews the IJ's decision as supplemented by the BIA, "minus
6 the single argument for denying relief that was rejected by
7 the BIA." *Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d
8 520, 522 (2d Cir. 2005); *Yan Chen v. Gonzales*, 417 F.3d 268,
9 271 (2d Cir. 2005). Because the BIA found clear error in
10 the IJ's adverse credibility determination, we assume,
11 without determining, Widada's credibility. *Id.*

12 This Court reviews the agency's factual findings under
13 the substantial evidence standard, treating them as
14 "conclusive unless any reasonable adjudicator would be
15 compelled to conclude to the contrary." See 8 U.S.C.
16 § 1252(b)(4)(B); see also *Manzur v. U.S. Dep't of Homeland*
17 *Sec.*, 494 F.3d 281, 289 (2d Cir. 2007). We review *de novo*
18 questions of law and the application of law to undisputed
19 fact. See, e.g., *Secaida-Rosales v. INS*, 331 F.3d 297, 307
20 (2d Cir. 2003).

21 Here, the agency found that the incidents Widada
22 described constituted discrimination and harassment, but did
23 not rise to the level of past persecution. See 8 C.F.R.
24 § 1208.16(b)(1)(i); see also *Ivanishvili v. U.S. Dep't of*

1 *Justice*, 433 F.3d 332, 341 (2d Cir. 2006) (to constitute
2 persecution, harm to an applicant must be sufficiently
3 severe, rising above “mere harassment”). We find no error
4 in that determination. Widada testified that he was taunted
5 by schoolchildren, asked for money by the police following a
6 motorcycle accident, and slapped by a police officer while
7 at a restaurant. He further claimed that someone painted a
8 derogatory term on his fence, and that a Muslim man knocked
9 his Bible to the ground and spit on it. While disturbing,
10 we cannot find, contrary to the agency, that these incidents
11 constitute persecution, even when viewed cumulatively. See
12 *Ai Feng Yuan v. U.S. Dep’t of Justice*, 416 F.3d 192, 198 (2d
13 Cir. 2005) *overruled in part on other grounds by Shi Liang*
14 *Lin v. U.S. Dep’t of Justice*, 494 F.3d 296, 305 (2d Cir.
15 2005) (en banc) (“persecution is an extreme concept that
16 does not include every sort of treatment our society regards
17 as offensive”) (internal citation omitted). Accordingly, we
18 affirm the agency’s past persecution finding.

19 We also find that the agency reasonably determined that
20 Widada failed to establish “that it is more likely than not
21 that he . . . would be persecuted on account of [a protected
22 ground].” 8 C.F.R. § 1208.16(b)(2); *Li Hua Lin v. U.S.*
23 *Dep’t of Justice*, 453 F.3d 99, 105 (2d Cir. 2006). Absent a
24 showing of a pattern or practice of persecution against

1 similar persons, an applicant must provide evidence that he
2 or she would be singled out for persecution. See 8 C.F.R.
3 § 1208.16(b)(2). Here, the BIA found that Widada had not
4 demonstrated a pattern or practice of persecution against
5 Chinese Christians. Because Widada does not challenge that
6 finding in his opening brief, we deem any such challenge
7 waived. See *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 541
8 n.1 (2d Cir. 2005).

9 Moreover, Widada produced no objective evidence
10 suggesting that he would be singled out for persecution.
11 See 8 C.F.R. § 1208.16(b)(2). While the record contains the
12 Department of State's 2004 International Religious Freedom
13 Report and its 2005 Human Rights Practices Report for
14 Indonesia, these reports are not specific to Widada.
15 Further, as the BIA observed, they indicate that while there
16 is ongoing interreligious conflict in Indonesia, conditions
17 are improving. See *Tu Lin v. Gonzales*, 446 F.3d 395, 400
18 (2d Cir. 2006). The agency also properly considered the
19 fact that Widada's siblings have remained in Indonesia
20 unharmed in finding that he had not shown that it is more
21 likely than not that he would be persecuted. See *Poradisova*
22 *v. Gonzales*, 420 F.3d 70, 80 (2d Cir. 2005). Thus, there is
23 no merit to Widada's argument that the agency failed "to
24 acknowledge the reality of the situation in Indonesia."

1 Nor is there merit to Widada's argument that the BIA
2 applied an improper standard in evaluating his "well-founded
3 fear of persecution," by not looking to his objective and
4 subjective fear. This argument conflates the burden of
5 proof for asylum with that for withholding of removal. See
6 *INS v. Stevic*, 467 U.S. 407, 429 (1984) (finding that the
7 well-founded fear standard is unique to discretionary claims
8 for asylum); see also *Paul v. Gonzales*, 444 F.3d 148, 155-
9 156 (2d Cir. 2006) (holding that withholding, unlike asylum,
10 does not require a subjective fear of persecution).
11 Accordingly, the agency properly denied Widada's withholding
12 of removal claim.

13 For the foregoing reasons, the petition for review is
14 DISMISSED, in part, and DENIED, in part. The pending
15 request for oral argument in this petition is DENIED as
16 moot.

17 FOR THE COURT:
18 Catherine O'Hagan Wolfe, Clerk
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20
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22 By: _____